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fore, it would seem that this Act, in spite of the stipulation in § 3 that it shall be liberally construed, should not be applied to them. It can scarcely be said that the policy of the Act is to regulate the consumption of liquors by foreigners abroad. Yet such would be the effect of prohibiting liquors in ship stores for consumption by foreign passengers and crews on the high seas. Such an interpretation would involve obvious and serious questions of the conflict of laws and the comity of nations. But, assuming that the Act does so apply, it seems that American ships on the high seas are not included within the scope of the operation of the Amendment or of the supplemental Acts. In both instances the words used are "territory subject to the jurisdiction" of the United States. (1919) 40 Stat. 1941, U. S. Comp. Stat. (Supp. 1919) § 2768; (1922) 30 Fed. Stat. Sup. 130. The use of the fiction of the territorial character of vessels would involve difficult situations in foreign ports in view of the laws of some European countries requiring that a ration of liquor shall be served to the crews of all vessels.

**EVIDENCE—ADMISSION BY SILENCE.**—In a prosecution for rape, the state offered evidence that after the mother of the prosecutrix, in the presence of the defendant's wife, had accused the defendant and he had denied the accusation, the wife said that she knew he was guilty, and that she had heard of his doing such things before. *Held*, one justice dissenting, that the defendant's failure to repeat his denial was not an admission, and the evidence offered was inadmissible. *People v. Countryman* (App. Div. 4th Dep't 1922) 195 N. Y. Supp. 728.

Formerly, in practice, all statements made in a party's presence were received in evidence against him as an admission, on the maxim that silence gives consent. This rule, however, is logically subject to qualifications, which are now generally recognized. See 2 Wigmore, *Evidence* (1904) § 1071. Statements made in the presence of the accused may be shown in evidence, only when they are of a character naturally calling for a reply, and when his failure to deny them would be an implied admission of their truth. *Vinson v. State* (1914) 10 Ala. App. 61, 64 So. 639. Such statements are always to be received with caution, *Moore v. Smith* (Pa. 1826) 14 Serg. & R. 388, especially when they are made, not by a party to the controversy, but by a stranger. *Larry v. Sherburne* (1861) 84 Mass. 34. In the instant case, the wife knew nothing about the crime charged, and the defendant having already denied the accusation, may not have felt called upon to repeat his denial. Evidence of the commission of criminal acts other than the particular ones charged in the indictment is generally inadmissible. *People v. Buffom* (1915) 214 N. Y. 53, 108 N. E. 184. Accordingly, the defendant's failure to deny his wife's charges of other acts of rape was not admissible. *State v. Shuford* (1873) 69 N. C. 486.

**INJUNCTION—SPECIFIC PERFORMANCE—LIQUIDATED DAMAGES.**—The defendant contracted to sell all his cranberries through the plaintiff association, and not to sell to anyone else. Damages were agreed upon at the rate of \$1.00 per box for each box the defendant failed to sell through the plaintiff. The plaintiff asked an injunction restraining the breach of the contract. *Held*, injunction granted. *Washington Cranberry Grower's Ass'n v. Moore* (Wash. 1922) 204 Pac. 811.

Where there is a contract which is normally within equitable jurisdiction and a forfeiture is provided for the purpose of securing its performance, equity will grant relief. *Koch v. Streuter* (1905) 218 Ill. 546, 75 N. E. 1049. But where the contract stipulates that the obligor has the alternative of performing the contract or paying a certain amount of money in lieu thereof, the obligee is left to his remedy at law. See *Koch v. Streuter*, *supra*, 552. Whether the forfeiture is a penalty to enforce performance or the price of non-performance is to be gathered

from a consideration of the object and purpose of the whole contract. See *Diamond Match Co. v. Roeber* (1887) 106 N. Y. 473, 486, 13 N. E. 419; cf. *Dills v. Doeblér* (1892) 62 Conn. 366, 26 Atl. 398. If the interpretation is doubtful it will be considered a penalty. See *Ayres v. Houston* (1920) 193 App. Div. 145, 148, 183 N. Y. Supp. 808. The purpose of marketing associations is to exclude competition and legal damages for interference would be speculative. But an objection that is usually urged against decreeing specific performance in this type of contract is that exacting and continuous supervision is necessary to enforce the decree. *Blue Point Oyster Co. v. Haagensohn* (D. C. 1913) 209 Fed. 278. As against the farmer, marketing contracts would not be difficult of enforcement, but as to the association, a different situation obtains. Specific performance will not be decreed unless there is mutuality of remedy and this would not exist unless the court was prepared to compel the association to perform had the parties been reversed. See *Marble Co. v. Ripley* (U. S. 1870) 10 Wall 339, 359. However, the recent tendency of courts of equity is to go rather far in compelling performance. *Jones v. Parker* (1895) 163 Mass. 564, 40 N. E. 1044; *Village of Larchmont v. Larchmont Park, Inc.* (1918) 185 App. Div. 330, 173 N. Y. Supp. 32. When courts of equity were first struggling for recognition they refused to decree specific performance where many issues were raised, because of fear that they could not enforce the decree. See Pound, *The Progress of the Law* (1919) 33 Harvard Law Rev. 420, 434. But with the dignity of the court well established and with its power to assess costs and punish contempt, the real reason for not compelling performance has disappeared.

**INJUNCTION—THREATENED SALE—TAX OR PENALTY.**—Pending a prosecution of the plaintiff for an illegal sale of liquor, the defendant, an internal revenue collector, assessed the plaintiff with a certain tax on such sale, and, in addition, a penalty authorized by the National Prohibition Act, Tit. 2, § 35, without giving the plaintiff a hearing. Upon the plaintiff's refusal to pay, the defendant threatened seizure and sale of his property. On appeal from a suit to enjoin these proceedings, *held*, Mr. Justice Brandeis and Mr. Justice Pitney dissenting, injunction granted. *Lipke v. Lederer* (1922) 42 Sup. Ct. 549.

It is essential to due process of law that before a tax or penalty may be assessed the tax payer must be given a fair opportunity for a hearing. *Central of Georgia Ry. v. Wright* (1907) 207 U. S. 127, 28 Sup. Ct. 47. The question whether the imposition is a tax or a penalty depends upon the intentment of the statute. *Bailey v. Drexel Furniture Co.* (1922) 42 Sup. Ct. 449; see *Dayton Brass Castings Co. v. Gilligan* (D. C. 1920) 267 Fed. 872, 874. If it is intended to suppress crime, the imposition is regarded as a penalty. *Helwig v. U. S.* (1903) 188 U. S. 605, 23 Sup. Ct. 427. Where it is in the nature of a tax, the tendency has been to refrain from enjoining its collection, in order to facilitate governmental transactions. *Nye, Jenks & Co. v. Town of Washburn* (C. C. 1903) 125 Fed. 817; see (1910) 10 COLUMBIA LAW REV. 564, and cases cited. Injunctions against collection of taxes are now prohibited by statute. (1867) 14 Stat. 475, U. S. Comp. Stat. (1916) § 5947. But the language of the statute is limited to taxes, and does not apply to penalties. Equity will grant an injunction only where the injury threatened will be irreparable or where there is no adequate remedy at law. *State v. Wood* (1900) 155 Mo. 425, 56 S. W. 474. There is an adequate remedy at law against the revenue collector for money wrongfully collected; *Abrast Realty Co. v. Maxwell* (D. C. 1913) 206 Fed. 333 (*semble*); hence there is no relief in equity. *Nye, Jenks & Co. v. Town of Washburn*, *supra*. Thus, in the instant case, an injunction to restrain the collection of the tax is clearly forbidden by statute, and as to the penalty there is an adequate remedy at law. The decision, therefore, despite the un-